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EXTRAORDINARY PART II—Section 2 PUBLISHED BY AUTHORITY

No. 21] NEW DELHI, WEDNESDAY, JUNE 20, 1962/JYAISTHA 30, 1884

LOK SABHA

The following Bill was introduced in Lok Sabha on the 20th June, 1962:—

BILL No. 58 OF 1962

A Bill further to amend the Hindu Adoptions and Maintenance Act, 1956

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

1. This Act may be called the Hindu Adoptions and Maintenance Short title (Amendment) Act, 1962.

78 of 1956. 5 2. In section 2 of the Hindu Adoptions and Maintenance Act, 1956 Amendment (hereinafter referred to as the principal Act), in the *Explanation* of section 2. to sub-section (1)—

(a) in clause (b), the word “and” occurring at the end shall be omitted;

10 (b) after clause (b), the following clause shall be inserted, namely:—

15 “(bb) any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh; and”.

3. In section 9 of the principal Act,—

Amendment of section 9.

(a) in sub-section (2), for the words, brackets and figure “sub-section (3)”, the words, brackets and figures “sub-section (3) and sub-section (4)” shall be substituted;

(b) for sub-section (4) the following sub-section shall be substituted, namely:—

“(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.”;

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(c) in the *Explanation*—

(i) in clause (i), the word “and” at the end shall be omitted;

(ii) after clause (i), the following clause shall be inserted, namely:—

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“(ia) “guardian” means a person having the care of the person of a child or of both his person and property and includes—

(a) a guardian appointed by the will of the child's father or mother, and

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(b) a guardian appointed or declared by a court; and’.

STATEMENT OF OBJECTS AND REASONS

Under the Hindu Adoptions and Maintenance Act, 1956, the guardian of a child has been given the power to give the child in adoption with the previous permission of the court. But this power can be exercised only by a testamentary guardian or a guardian appointed or declared by the court as specified in section 9(4) of the Act. A person having the care and custody of a child has, however, no power to give the child in adoption although for all practical purposes he is the guardian of the child. Then again, there is no provision in the Act authorising the adoption of a child abandoned by both of his parents or of a child whose parentage is not known. Children are sometimes abandoned by their parents for fear of social opprobrium, for reasons of poverty and for other reasons. If these children could be given in adoption, they might grow up in congenial home atmosphere as good citizens. These abandoned children are very often brought up in foundling homes or other children's institutions. The manager of such homes or institutions having the care and custody of these children is for all practical purposes their guardian and there is no reason as to why he should not have the power to give the child in adoption with the permission of the court like the testamentary guardian or the guardian appointed or declared by the court. It is, therefore, considered that this lacuna in the law should be removed by suitably amending section 9(4) of the Hindu Adoptions and Maintenance Act, 1956, so as to bring a person having the care and custody of the child within the meaning of 'guardian'.

Under section 10 of the Act only a Hindu can be adopted. As the religion of an abandoned child or of a child whose parentage is not known cannot be ascertained, it is proposed to amend the Explanation to section 2(1) of the Act to the effect that a child, legitimate or illegitimate, who has been abandoned by both of his parents or whose parentage is not known but who in either case is brought up as a Hindu will be a Hindu by religion.

The Bill is designed to give effect to the above proposals.

NEW DELHI;
The 7th June, 1962.

A. K. SEN.

M. N. KAUL,
Secretary.

